

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| ULIOUS BROOKS, | : | |
| | : | NO. 1:09-CV-00922 |
| Plaintiff, | : | |
| | : | |
| | : | |
| v. | : | OPINION AND ORDER |
| | : | |
| | : | |
| HOMER YATES, et al., | : | |
| | : | |
| Defendants. | : | |

This matter is before the Court on the Magistrate Judge's Report and Recommendation, in which she recommends that Defendants' motion for summary judgment be granted in part and denied in part (doc. 125). Defendant Yates partially objected to the Magistrate Judge's Report (doc. 128), as did Plaintiff (docs. 130, 132). In addition, Plaintiff filed a motion for the appointment of counsel, which is ripe for the Court's decision (doc. 127).

In brief, Plaintiff is an inmate at the Southern Ohio Correctional Facility and has filed a civil rights action against Defendants, alleging excessive use of force, negligence and retaliation. The Magistrate Judge determined that Plaintiff's claims against Defendants Yates, Kerns and Mahlman in their official capacities are barred by sovereign immunity and should thus be dismissed, with Defendants being granted judgment as a matter of law (doc. 125). In addition, the Magistrate Judge recommends that the claims against Defendants Kerns and Mahlman in

their individual capacities be dismissed but that Plaintiff's excessive force claim against Defendant Yates survive summary judgment.

As required by 29 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has reviewed the comprehensive analysis of the Magistrate Judge and considered de novo all of the filings in this matter, including the objections filed by both sides. Upon thorough consideration of the foregoing, the Court finds the objections unpersuasive and determines that the Magistrate Judge's Report and Recommendation is thorough, well-reasoned and correct. Consequently, the Court ADOPTS and AFFIRMS it in its entirety. Accordingly, Defendants' motion for summary judgment (doc. 101) is GRANTED in part and DENIED in part; all claims against Defendants Kerns and Mahlman in both their individual and official capacities are DISMISSED WITH PREJUDICE; all claims against Defendant Yates in his official capacity are DISMISSED WITH PREJUDICE; and only Plaintiff's claim for excessive force under the Eighth Amendment brought against Defendant Yates in his individual capacity remains.

As to Plaintiff's motion for the appointment of counsel, it is DENIED (doc. 127). The appointment of an attorney is not constitutionally required for civil rights cases. Lavado v. Keohane, 992 F.2d 601, 604-05 (6th Cir. 1993). While courts may in some instances nonetheless appoint counsel to such cases,

exceptional circumstances must be present to justify such action.

Id. Plaintiff's claim is not exceptional-it is instead a straight-forward excessive force claim, and he has proved himself quite capable of adequately representing himself in this matter.

SO ORDERED.

Dated: June 8, 2012

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge